



Ex Parte

February 22, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW B204
Washington, DC 20554

**Re: AT&T Corp. Petition for Declaratory Ruling Regarding
“Enhanced” Prepaid Card Services, WC Docket No. 03-133, ex parte
communication**

Dear Ms. Dortch:

The National Association of State Utility Consumer Advocates (NASUCA)¹ takes this opportunity to urge denial of AT&T’s year-old petition seeking an exemption from universal service fund (“USF”) and access charge obligations based on the claim that its prepaid calling cards classify as an “enhanced” or “information” service under the Communications Act.

First and foremost, AT&T’s legal argument is without merit. AT&T seeks to transform consumer use of the card for making intrastate and interstate telephone calls into an “enhanced” or “information” service by claiming that the telephone call is merely

¹ NASUCA is a voluntary association of 43 advocate offices in 41 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio. Rev. Code Chapter 4911; 71 Pa.Cons.Stat. Ann. § 309-4(a); Md. Pub.Util.Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

incidental to the card's use in disseminating advertising. This convoluted premise is based upon a two-step sequence: Prior to the cardholder dialing a telephone number, the caller is first connected to a computer platform which retrieves and transmits information not of the user's choosing but rather pre-selected by AT&T, e.g., a promotional or advertising message from a major retailer.² The statutory definition of "information service" includes "electronic publishing" (47 U.S.C. § 153 (20)), which in turn includes the "dissemination [or] provision" of "advertising" to a "person" (47 U.S.C. § 274(h)(1)). AT&T seeks through this derivative use of *advertising* to dub the calling cards an information service which in turn would allow it to avoid USF and access charge obligations required of telecommunications services but not of information services. This attempt at semantic sleight of hand must be rejected.

Clearly, AT&T's legal argument is rebutted by its own marketing message. AT&T calling card ads do not urge consumers to buy the card so as to have the opportunity to listen to an advertising message. Otherwise one could safely assume that consumers might insist on *being* paid -- not paying -- for that captive use of their time. Rather consumers pay money in response to AT&T's marketing message that tells them the card will allow them to make telephone calls. The calling card unquestionably falls within the definition of a telecommunications service under 47 U.S.C. § 153 (46). That definition in turn triggers the USF and access charge obligations which AT&T seeks to avoid.³

In fact, the advertising which customers are required to hear includes an AT&T political message. Many of the AT&T calling cards sold now bear messages that include the following or some variation: "The Federal Communications Commission is reviewing the fees applied to your prepaid card calls. Your current rates, however, still apply. To tell the White House you want prepaid card rates to stay low, please call 800-696-6322." It is difficult to see how *from the consumers' perspective* this AT&T lobbying represents an enhancement in the service.

Second, NASUCA also opposes AT&T's petition because the already-strained USF would surely be put in further jeopardy if such an information service designation were granted. With such a precedent in hand, it is hard to imagine that any other carrier would not follow suit by redefining its prepaid card as an "enhanced" or "information" service in order to avoid its own USF and access charge obligations. Equally, AT&T's attempt to evade intrastate access charges by routing all of its calling card calls -- even those that begin and end within the same state -- to an out-of-state computer is an ill-disguised attempt to circumvent state jurisdiction.

Third, NASUCA further objects to AT&T's petition based upon considerations of practicality and fairness. USF charges should be borne equally by all telephone consumers. Inasmuch as prepaid cards represent a continuously expanding source of

² As discussed below, AT&T has recently added a political message -- again, not of the caller's choosing -- to the "enhancements" of its calling cards.

³ In AT&T's Form 10-Q filed on November 5, 2004, AT&T notes that it has realized "savings" of \$160 million in USF charges and \$340 million in access charges through classifying its calling card service as "enhanced."

telephone revenue, failure to collect USF assessments on prepaid card calls unfairly shifts that burden onto other consumers, i.e., users of traditional phone service. Similarly, the USF surcharges should be applied to all prepaid card users. Otherwise the charge is not competitively neutral as required under the Communications Act.

Fourth and finally, NASUCA fundamentally objects to the manner in which AT&T sought public support for its position by advancing arguments that exploit consumers' lack of understanding of the Communications Act, including USF and access charge obligations. AT&T fails to substantiate its claim that the vast majority of prepaid calling card users fall into three categories: military personnel, retirees, and low-income consumers. It is clear, however, that AT&T has nonetheless persuaded various parties that principles of patriotism and/or concern for those struggling with poverty compel approval of this Petition. It further persuaded various parties that denial of its Petition will somehow be followed by a covert FCC and/or Bell strategy to increase hidden charges on prepaid calling cards that would increase their price as much as 20 times higher than the charges now included in the prepaid card's prices, even though the impact of including USF and access charges would be much smaller. It is apparent that payment of required USF contributions would not necessarily raise prepaid calling prices. Other prepaid retail products are priced even lower than AT&T's lowest-priced product. See, e.g., www.onesuite.com.

The paradox is that those with low incomes, whether they live in urban or rural communities, lose when AT&T fails to pay its fair share into the USF from the revenues generated by its prepaid calling cards. Furthermore, when those who use calling cards are insulated from USF assessments, the assessments are increased for low-income consumers who use traditional phone service.

AT&T's campaign of manipulation should not be rewarded. For that and the other reasons included here, NASUCA urges the Commission to deny AT&T's petition and to confirm most emphatically that prepaid calling cards such as those sold by AT&T are telecommunications services.

Sincerely,

/s/ David C. Bergmann

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